

The Aircraft Use Tax Law applies to non-retail transactions, gifts, or transfers of aircraft. See 86 Ill. Adm. Code 152.101. (This is a GIL.)

October 24, 2007

Dear Xxxxx:

This letter is in response to your letter dated February 15, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

The purpose of this letter is to request a determination opinion of the Aircraft Use Tax Act pertaining to trade-in allowance for occasional sales between individuals not registered with the state.

I owned a small single-engine aircraft which was registered in Illinois and had the use tax paid on it. I wanted a different plane, so when an acquaintance told me he had an aircraft for sale I approached him with an offer to trade planes. We finally agreed to an even trade (sale document attached as **Attachment 1**).

When I got the forms for aircraft registration and use tax, form RUT-75 did not provide for trade-in; therefore, I used form RUT-25. I was contacted by your department (copy of letter attached as **Attachment 2**) and told that I could only use form RUT-75 since this was not considered a sale at retail, and that no trade-in is allowed. Furthermore, I was told that only the 'fair market value' could be used to calculate the tax due. I was provided with a copy of Department of Revenue rules and informational bulletin FY 2004-06-A (copy attached hereto as **Attachment 3 & 4**) as back-up proof. I DON'T BELIEVE THIS TO BE THE INTENT OF THE STATUTE AND I WOULD ARGUE THAT THE DEPARTMENTAL POLICY IS CONTRARY TO ENACTED LAW.

For your quick reference, I have attached a copy of 35 ILCS 157, Aircraft Use Tax Law (**Attachment 5**). A portion of 35 ILCS 105/, Use Tax Act, contains definitions of terms

used in the Aircraft Use Tax Law. These are 35 ILCS 105/1 through 35 ILCS 105/2 (**Attachment 6**), Illinois Department of Revenue form RUT-75 (**Attachment 7**), and Information Pamphlet as furnished by IDOT-Aeronautics (**Attachment 8**).

I find no language in the Aircraft Use Tax Law prohibiting 'trade-in', and 'selling price,' as used in this Act and defined in 35 ILCS 105/2, allows for a deduction of the value of trade-in property. Therefore, the Department of Revenue policy concerning trade-in appears contrary to the enacted statute.

In the matter of 'fair market value' being the default amount used for calculating the tax as called for on the Department regulations, I contend that the selling price as defined and used here, would start out as 'fair market value,' or the actual selling price used in the transaction, whichever is greater, but not including the value or credit given for trade-in.

It appears these statutes allow for deduction of a trade-in allowance for all sales transactions except that the Department regulations don't allow for a trade-in deduction as shown on the departmental policy (**Attachment 8**) or on the tax reporting form RUT-75, required to be used for sales between individuals not registered or in the business of retail sales. I believe this is contrary to the word of the law.

Please render your opinion in this matter and notify me of your determination. I appreciate you taking the time to address my concerns.

## DEPARTMENT'S RESPONSE

Under the Use Tax Act, "[a] tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for commercial exhibition." 35 ILCS 105/3.

Under the Aircraft Use Tax Law ("Law"), "[a] tax is hereby imposed on the privilege of using, in this State, any aircraft as defined in Section 3 of the Illinois Aeronautics Act acquired by gift, transfer, or purchase after June 30, 2003. This tax does not apply (i) if the use of the aircraft is otherwise taxed under the Use Tax Act; . . . ." 35 ILCS 157/10-15.

A transfer of airplanes in Illinois between two parties, neither of whom is a retailer, is subject to the Aircraft Use Tax Law, not the Use Tax Act. Therefore, the Aircraft Use Tax Law provisions are the ones that must be followed. The Aircraft Use Tax is a privilege tax imposed on the privilege of using, in this State, aircraft as defined in Section 3 of the Illinois Aeronautics Act. The tax applies to aircraft acquired by gift, transfer, or non-retail purchase after June 30, 2003. The tax is imposed on the use of aircraft in this State regardless of whether the aircraft is actually registered under the Illinois Aeronautics Act. See 86 Ill. Adm. Code 152.101(a).

The Use Tax Act allows a purchaser to offer a trade-in to a retailer of aircraft. The retailer will collect and remit sales tax when it sells the trade-in at retail at a subsequent time. Since there is no retailer involved in the transfer of airplanes between two parties, neither of whom is a retailer, the parties that transfer the airplanes will owe tax under the Aircraft Use Tax Law.

Under Section 10-15 of the Aircraft Use Tax Law, the rate of tax is 6.25% of the selling price for each purchase of aircraft that qualifies under the Law. Tax shall be imposed on the selling price of an aircraft acquired through purchase. However, the selling price shall not be less than the fair market value of the aircraft on the date the aircraft is purchased or the date the aircraft is brought into the State, whichever is later. For purposes of calculating the tax due when an aircraft is acquired by gift or transfer, the tax is imposed on the fair market value of the aircraft on the date the aircraft is acquired or the date the aircraft is brought into the State, whichever is later. See 86 Ill. Adm. Code 152.105.

Section 10-20 of the Law requires that the purchaser, transferee, or donee shall file a return signed by the purchaser, transferee, or donee with the Department of Revenue on a form prescribed by the Department.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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